

proceedings, if they are not to side with the dissenting share-holders. Without implying any reflection on the liquidators personally and without expressing any opinion as to the merits of the conflicting interests in the liquidation it is clear that the appellants have misconceived their position and that in the interests of liquidation their removal is desirable.

In this view of the matter it is not necessary to consider the points in the appeal arising out of the first petition filed by the appellants for directions of the Court on certain points.

I, therefore, agree that both the appeals be dismissed. I concur in the order as to costs.

Solicitors for appellants : Messrs. *Mehta, Lalji & Co.*

Solicitors for respondents : Messrs. *Little & Co.*

Appeals dismissed.

V. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

CHANBASAPPA NAGAPPA HAVERI (ORIGINAL OPPOKENT), APPELLANT
 v. HOLIBASAPPA BASAPPA MOTIBENNUR AND ANOTHER (ORIGINAL
 APPLICANTS), RESPONDENTS¹.

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February 1.

Indian Limitation Act (IX of 1908), section 15—Civil Procedure Code (Act V of 1908), Order XXI, Rule 53 (1) (b)—Transfer of decree for execution—Attachment of decree in another execution proceeding—Effect—Limitation.

One B obtained a decree against C in Haveri Court in April 1914. On B's application, it was directed that the decree be transferred by the Haveri Court to the Hsbli Court for execution. In September 1914, B took out a Darkhast in Haveri Court, but before the execution proceeded any further,

¹Second Appeal No. 208 of 1923.

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B's decree was attached by a creditor who had obtained a decree against him in the Haveri Court. In August 1916, the Darkhast in Haveri Court was disposed of as B did not apply for transfer of execution to Hubli Court as directed, but, in reply to an enquiry from Hubli Court, the Haveri Court stated, on July 10, 1917, that the attachment still continued. The Hubli Court disposed of B's Darkhast on July 13, 1917. On January 21, 1921, B's attaching creditor informed the Haveri Court that his debt was satisfied and the Haveri Court removed the attachment and informed Hubli Court accordingly. On March 4, 1921, B applied to Hubli Court to continue the execution of his decree, but the Court informed him that his Darkhast was disposed of. B having presented another Darkhast on April 13, 1921,

Held, that the application was barred by limitation, for the attachment notice issued by the Haveri Court, under Order XXI, Rule 53 (1) (b), had not prevented the attaching creditor or his judgment-debtor B from executing the decree in the Hubli Court and section 15 of the Limitation Act was, therefore, inapplicable.

SECOND appeal, from the decision of N. J. Wadia, Assistant Judge at Dharwar, confirming the order passed by R. Baindur, Subordinate Judge at Hubli, in Darkhast No. 189 of 1921.

Proceedings in execution.

Basappa obtained a decree against the defendant for Rs. 1,278-7-4 in the High Court on April 2, 1914. The suit was filed in the Haveri Court. On Basappa's application the decree was transferred for execution to the Hubli Court. He applied, on September 2, 1914, to execute the decree.

On April 7, 1916, one Murgappa obtained a decree against Basappa in the Haveri Court and in execution of it attached Basappa's decree against the defendant. On August 8, 1916, the Darkhast was disposed of as he did not apply for transfer of execution to the Hubli Court. On July 4, 1917, the Hubli Court inquired of the Haveri Court as to the result of the attachment and on July 10, 1917, the Haveri Court stated in reply that the attachment still continued and that the amount of the decree should be payable to the decree-holder of

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the Haveri Court. On receipt of this reply the Hubli Court disposed of the Darkhast on July 13, 1917. On January 21, 1921, Murgeppa informed the Haveri Court that his debt was satisfied and that the attachment could be removed. The Court accordingly removed the attachment the same day and informed the Hubli Court.

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Basappa applied to the Hubli Court, on March 4, 1921, to continue the execution of the decree. He was informed that the Darkhast was already disposed of.

Basappa filed the present Darkhast on April 13, 1921.

The Subordinate Judge allowed the execution to proceed on the following grounds :—

“ The objection to this application is mainly on the ground that it is not in time. The provision of law applicable to the case is to be found in Order XXI, Rule 53, Civil Procedure Code. It contemplates two cases in which an execution of a decree can be stayed as the result of attachment in execution of another decree. The first is when both the decrees are of the same Court and the other when they are of different Courts. In the latter case the procedure laid down for the Court receiving an attachment order is to be found in sub-clauses (i) and (ii) of clause (b) of the provision of law. It says that the said Court should stay the execution until the attachment is cancelled by the attaching Court or the holder of the decree sought to be executed or his judgment-debtor applies to the former Court.

In my opinion, according to the facts stated above, the two decrees in question in this case must be considered to belong to two different Courts, for, although both of them belong actually to Haveri Court, one of them was transferred to this Court and it was attached in execution of the other and under section 42 of the Civil Procedure Code when a decree is transferred to another Court for execution it becomes a decree of the latter Court for the purposes of execution. The question now before the Court being related to execution, the decree in question is as good as the decree of this Court. Hence the procedure last mentioned is evidently applicable to the present case.

According to this procedure, this Court ought to have kept the Darkhast proceedings of the decree under attachment pending until either of the above said two events happened. But it hastened to dispose of the Darkhast unwarrantedly. For this fault of the Court the decree-holder had to give a fresh Darkhast according to the directions of the Court. Even here the Court

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instead of so directing could have sent for the original Darkhast and continued the proceedings. But the Court for some reason thought that a fresh application was necessary. But this does not mean a breach in the continuity of the original proceedings when the law does not allow it."

On appeal, this order was confirmed by the Assistant Judge.

The defendant appealed to the High Court.

S. V. Palekar, for the appellant.

G. S. Mulgaokar, for the respondents.

MACLEOD, C. J.:—This appeal raises an interesting point which does not seem to be covered by any distinct authority. The facts are somewhat confusing. One Basappa Murgappa filed a suit against Chanbasappa and another in the Haveri Court, in the Dharwar District, in which the High Court passed a decree on April 2, 1914, directing that the plaintiff should recover from the defendant a certain sum of money and costs. That decree was transferred by the Haveri Court to the Hubli Court for execution. A Darkhast was taken out on September 2, 1914, but before execution proceedings could go any further the decree was attached by a creditor Murgappa who had obtained a decree against Basappa in the Haveri Court on April 7, 1916. On August 8, 1916, the Darkhast in the Haveri Court was disposed of as the plaintiff did not apply for transfer of execution to the Hubli Court as directed. But although the Darkhast was disposed of the Haveri Court seems to have been of opinion that its attachment on the decree in the previous suit, which was then resting in the Hubli Court, continued.

On July 4, 1917, the Hubli Court wrote to the Haveri Court asking to be informed what had happened to the attachment, and on July 10, 1917, the Haveri Court wrote to the Hubli Court that the attachment still continued, and that the amount of the

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decree should be payable to the decree-holder of the Haveri Court. On receipt of this reply the Hubli Court disposed of the Darkhast on July 13, 1917.

Nothing further was done and the decree remained in the Hubli Court until January 21, 1921, when Murgeppa, the holder of the decree in the Haveri Court, informed the Haveri Court that his debt was satisfied and his attachment should be removed, and accordingly the Haveri Court removed the attachment on January 21, 1921, and informed the Hubli Court accordingly.

Then the original decree-holder Basappa applied to the Hubli Court on March 4, 1921, to continue the execution of his decree. The Court informed him on February 5, 1921, that his Darkhast was already disposed of and asked him to present another Darkhast giving all the necessary information. Accordingly he filed the present Darkhast on April 13, 1921.

The question of limitation was raised, but the Subordinate Judge held that the question of limitation did not arise and directed execution to proceed.

In appeal this order was confirmed on the ground that the appellant's contention that the attachment of the decree ceased on August 8, 1916, when Darkhast No. 20 of the Haveri Court was dismissed cannot be accepted as the Haveri Court expressly kept the attachment alive.

It seems to us that both Courts have failed to realize what happens when a decree is attached. Murgeppa had got a decree against Basappa who before that had obtained a decree against Chanbasappa. So Murgeppa sought by attachment to prevent Basappa reaping the fruits of his decree against Chanbasappa, and that could only be done under the provisions of the Code of Civil Procedure, and therefore, under Order XXI,

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Rule 53 (1)(b), Murgeppa asked the Haveri Court to issue to the Hubli Court a notice requesting the Hubli Court to stay the execution of its decree which would remain effective under the provisions of the rule unless and until—

(i) the Court which passed the decree sought to be executed (that is to say in this case the Haveri Court) cancelled the decree, or

(ii) the holder of the decree sought to be executed (that is to say Murgeppa) or his judgment-debtor (that is to say Basappa) applied to the Court receiving such notice (that is to the Hubli Court) to execute its own decree.

I should mention here that the decree of the Haveri Court when it was transferred to the Hubli Court became for the purposes of the execution a decree of the Hubli Court.

When the notice had been received, the Hubli Court was bound, on the application of the creditor Murgeppa who had attached the decree or his judgment-debtor Basappa, to proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

Under sub-rule (3) the holder of the decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

So that the important question here is whether limitation ceased to run against Basappa, the original decree-holder, or his attaching creditor Murgeppa, when the notice was sent to the Hubli Court. If that notice amounted to an order enjoining the Hubli Court

from executing the decree, then the time while that injunction was running would be excluded under section 15 of the Indian Limitation Act. But we think that section 15 only applies to an absolute stay, and not to a limited stay as would be ordered by the notice under Order XXI, Rule 53(1)(b). The stay does not prevent either the holder of the decree sought to be executed or his judgment-debtor from seeking to execute the original decree, and that being the case, time must be taken as running against them. It follows then that nothing was done towards the execution of this decree within the three years before the application was made on March 4, 1921, and consequently, that application was barred by limitation. .

From another point of view this must be the necessary result of the proceedings under Order XXI, Rule 53(1)(b). Otherwise the proceedings between the original decree-holder and his judgment-creditor might continue over an unlimited space of time to the great disadvantage of the original judgment-debtor who might be faced with proceedings in execution many years after the decree has been passed without any intermediate steps being taken in aid of execution.

The appeal must be allowed and the Darkhast dismissed with costs throughout.

SHAH, J.:—I entirely agree. I only desire to add that I have not overlooked the possibility of treating the application of March 4, 1921, as an application for the continuation or revival of the original application for execution which was made in September 1914. But in view of the fact that on July 13, 1917, this first application for execution was disposed of, and no steps whatever were taken for execution of the decree until the second application of March 4, 1921 came to be made, I do not think that the first Darkhast

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could be treated as pending after it was disposed of in 1917 nor can the second application be held to be an application for the revival of the first Darkhast to save limitation in favour of the plaintiff.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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February, 6.

ANJIRABAI KOM GULABRAO KESHAVRAO POWAR (ORIGINAL DEFENDANT), APPELLANT v. PANDURANG BALKRISHNA POWAR (ORIGINAL PLAINTIFF), RESPONDENT².

Hindu law—Adoption—Death of son, a widower without children—Mother succeeding as heir—Adoption by mother—Validity.

Under Hindu law, a mother succeeding to her son who has died without leaving any other nearer heir, is entitled to adopt even though the son may have attained the age of ceremonial competence and may have been married before his death.

Venkappa Babu v. Jivaji Krishna⁽¹⁾, followed.

Madana Mohana v. Purushothama⁽²⁾, considered.

SECOND appeal, from the decision of B. R. Mehendale, First Class Subordinate Judge, with Appellate Powers, at Satara, reversing the decree passed by V. V. Bapat, Subordinate Judge at Karad.

Gopal and Kesu were two divided brothers, the sons of one Babaji. Gopal had a son Balkrishna whose widow Rakhma adopted the plaintiff Pandurang on June 14, 1907. Kesu had a wife Lakshmi and a son Maruti. Maruti had had two wives but they were both dead when he himself died, at the age of twenty-five, on December 5, 1904. After his death his mother Lakshmi (defendant No. 1), the widow of Kesu, adopted Gulabrao (defendant No. 2) on December 16, 1916.

²Second Appeal No. 204 of 1923.

⁽¹⁾ (1900) 25 Bom 306.

⁽²⁾ (1918) L. R. 45 I. A. 156.